



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E049/2024

JOSHUA AOMO OCHARO VS THE REPUBLIC

RULING

(Originating from Criminal Case (SO) No. 25 of 2016, formerly Criminal Case No. 579 of 2016 before Hon. S. Chitumbi (SRM) at the Chief Magistrate's Court, Mombasa, delivered on 23rd May 2017, and HCCR Appeal No. 124 of 2017 at Mombasa)

1. The applicant approached this Honourable Court seeking a review of his sentence, relying on the mitigation circumstances outlined below.
2. The request is premised solely on the severity of the sentence, and it should not be construed as a hearing *de novo* or an appeal.
3. The applicant clarified that conviction is not in issue, as it was lawfully entered, and therefore he restricted himself to matters relating to sentencing and the principles governing it.
4. Similarly, this Court is only required to refer to the evidence adduced to the extent that it is relevant to sentencing, with a view to determining whether the sentence imposed was proper.
5. The applicant acknowledges that while this Court may refer to evidence to establish whether aggravating or mitigating circumstances existed, such reference should not be seen as a re-evaluation of the conviction itself.
6. In essence, the applicant prays that this Court receives and considers his mitigation submissions and adjusts his sentence accordingly.
7. He cited Sections 216 and 329 of the Criminal Procedure Code (CPC), which empower the Court, before passing sentence, to receive such evidence as it deems fit in order to inform itself as to the appropriate sentence.
8. The said provisions were intended to guide the Court in understanding the circumstances of an accused person before pronouncing sentence.
9. It is therefore pertinent to define mitigation in this context and its effect on such an application.
10. Mitigation, as contemplated under Sections 216 and 329 of the CPC, is the act of lessening the



severity of something unpleasant, such as punishment. It is an act of making a sentence less severe.

11. According to *Black's Law Dictionary (2nd Ed.)*, mitigation is defined as:
“*Alleviation, abatement, or diminution of a penalty or punishment imposed by law. Mitigating circumstances do not constitute a justification or excuse for the offence but, in fairness and mercy, may reduce the degree of moral culpability.*”
12. In the context of this application, mitigation refers to the lessening of the intensity of punishment and the period of suffering endured by the applicant.
13. The **Judiciary of Kenya Sentencing Policy Guidelines (2015)** at page 15, paragraph 4.1, outline the objectives of sentencing as follows:
 - (a) *Retribution* – to punish the offender for his criminal conduct in a just manner.
 - (b) *Deterrence* – to deter both the offender and others from committing similar offences.
 - (c) *Rehabilitation* – to reform the offender into a law-abiding person.
 - (d) *Restorative Justice* – to address the needs of victims, the community, and the offender.
 - (e) *Community Protection* – to protect the community by incapacitating offenders.
 - (f) *Denunciation* – to communicate society’s condemnation of the criminal conduct.
14. Paragraph 4.2 of the Guidelines emphasizes that sentencing must balance these objectives holistically, while considering relevant factors such as:
 - (a) Age of the offender;
 - (b) First offender status;
 - (c) Whether the offender pleaded guilty;
 - (d) Character and record of the offender;
 - (e) Remorse;
 - (f) Possibility of reform and social reintegration; and
 - (g) Any other relevant factors.
15. The applicant urged this Court to consider his circumstances before the offence, at the time of trial, and subsequent to conviction, as they are relevant in determining an appropriate sentence.
16. He further submitted that the justification for punishment is not static and may change over time as a convict demonstrates reform and rehabilitation.
17. He relied on Section 6 of the CPC, which provides that the High Court may pass any sentence authorized by law, urging this Court to consider his mitigating circumstances.
18. The applicant also invoked **Article 10(3) of the International Covenant on Civil and Political Rights**, which provides that:
“*The penitentiary system shall comprise treatment of prisoners the aim of which shall be their reformation and social rehabilitation.*”
19. He noted that where an accused has served a substantial part of a sentence, the Court may direct an inquiry by a probation officer or seek a pre-sentence report to establish the level of rehabilitation.
20. The applicant relied on the case of **Wanjema v Republic [1971] EA 493**, where Trevelyan J. held that an appellate court should not interfere with sentence unless the trial court overlooked material factors, took into account immaterial ones, acted on wrong principles, or imposed a manifestly excessive sentence.
21. He further cited **Philip Mueke Maingi & Others v Republic, Machakos Constitutional Petition No. E017 of 2021 (Hon. G.V. Odunga, J.)**, where the Court held that provisions imposing mandatory minimum sentences under the Sexual Offences Act were unconstitutional to the extent that they denied courts discretion in sentencing.
22. He therefore urged this Court to review his sentence in light of the foregoing authorities and



principles.

MITIGATING FACTORS

- (a) The applicant is a first offender.
- (b) Prison records show favourable reports of his rehabilitation and conduct.
- (c) He has maintained cordial relations with fellow inmates and prison staff.
- (d) He has embraced Christianity and undergone spiritual transformation.
- (e) He has a wife and eight children who depend on him and are currently destitute.
- (f) He is remorseful and has sincerely apologized to the victims.
- (g) He prays for forgiveness from both God and the victims.
- (h) He expresses readiness to reintegrate positively into society and serve as a role model.

RELIEF SOUGHT

The applicant prays that this Honourable Court reviews his sentence in light of the mitigating factors and grants any other orders it deems just and appropriate.

COURT'S DETERMINATION

A positive sentence review report was filed.

The Court however notes that the applicant had previously filed **High Court Criminal Appeal No. 124 of 2017**, in which, through a judgment delivered on **8th July 2021**, the sentence was reduced from **life imprisonment to twenty (20) years**, with the sentences ordered to run concurrently. As such a court of the same status has dealt with the sentence. Further the supreme court has settled the turbulent waters on re sentencing in the case of Johua Mwangi Kingara .

It was also observed that the applicant had exposed the minors to the risk of HIV infection, and therefore a deterrent sentence was necessary.

Having considered the application, the Court finds that it lacks merit, as the sentence has already been reviewed and reduced from life imprisonment to 20 years.

Accordingly, the **application is hereby dismissed**.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 14TH DAY OF NOVEMBER, 2025.

W.K. MICHENI
JUDGE

IN THE PRESENCE OF:

- **The applicant in Person**
- **For the Prosecution:** Mr. Ngiri
- **Court Assistant:** Ms. Bebora

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-15 11:03:01

